



SIOP

**Society
for
Industrial
and
Organizational
Psychology**

May 27, 2004

Joseph DuBray, Jr., Director
Division of Policy, Planning and Program Development
OFCCP, Room C-3325,
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Mr. DuBray,

The Society for Industrial and Organizational Psychology (SIOP) welcomes the opportunity to provide the following comments on the Proposed Rule regarding the Obligation To Solicit Race and Gender Data for Agency Enforcement Purposes. SIOP is a Division of the American Psychological Association, an organizational affiliate of the American Psychological Society, and includes over 3500 member industrial-organizational psychologists and 2800 student affiliates. The Society's mission is to enhance human well-being and performance in organizational and work settings by promoting the science, practice, and teaching of industrial-organizational psychology.

SIOP has organized a panel of its members to respond to the Proposed Rule; the panel comprised personnel selection specialists working in a range of environments and included industrial-organizational psychologists working as corporate staffing specialists, selection system and human resources electronic technologies consultants, as well as recognized academic experts. All panelists have extensive experience with the design and implementation of recruiting and selection systems in business and industry settings.

The Internet and related electronic technologies have had a dramatic impact on the practice of employment recruitment and selection, and the deployment of these technologies is an important advancement toward fair and open access to employment opportunities for all segments of our labor market. The Office of Federal Contract Compliance Programs (OFCCP) is commended for addressing this impact and for recognizing that an individual's ability to meet job-related criteria is critical to determining who is considered a viable applicant for a position in the context of Internet-based recruiting and selection.

Although the Proposed Rule provides for much-needed guidance that extends beyond the recently issued Additional Questions and Answers to the Uniform Guidelines on Employee Selection Procedures (UGESP), there is still a need for further refinement of the guidance to ensure that Federal contractors can adequately understand how to comply with their obligations, execute fair practices, and collect accurate and representative data, while at the same time minimizing their recordkeeping burden. There are several areas where we have concerns; these are itemized below.

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Specific Comments

1) The differences between the OFCCP's Proposed Rule and the Additional Questions and Answers should be reconciled. The OFCCP's definition of an Internet Applicant differs from the EEOC definition. It is unclear why two different definitions are necessary. For employers who are Federal contractors, this situation is confusing and adds an additional layer of complexity to the recordkeeping requirements. There are several points of departure between these documents; the most problematic of these differences are highlighted throughout our comments. By offering guidance that conflicts with the Additional Questions and Answers, the OFCCP has created a situation that appears to require contractors to maintain two sets of applicant records, since it is possible for an individual to be defined as an applicant under one set of guidance and not under the other. A single definition is preferred that incorporates language requiring applicants to meet basic qualifications for a specific position; at a minimum the Proposed Rule should describe how the two sets of guidance should be interpreted together.

2) The concept of "submission of interest" should be narrowed to reflect stated interest in a particular job. The many techniques that have proliferated for Internet-based recruitment allow for a range of actions to be considered a submission of interest. For example, placing a job title into a "shopping cart," posting a resume on a career Website dedicated to jobs within specific industries, having an automated resume agent populate a job profile on a company's career site, and even clicking into a job opportunity description could all be considered as expressions of interest.

Because the proposed rule requires contractors to retain records of all submissions of interest obtained through the Internet or related electronic technologies, regardless of status as an applicant, further specification of the range of actions that trigger this requirement is essential. We recommend that a submission of interest include a reference to a particular job. This change would increase the consistency with the Additional Questions and Answers and would allow the awkward fourth criterion of the proposed rule to be eliminated (see Comment 6).

3) Examples should be provided of employer actions that constitute "consideration" and those that do not. Just as job seekers have many options for exploring information about jobs on the Internet, employers have many new tools at their disposal for identifying potential recruits. The status of activities such as searching an external database of resumes or querying an internal database of recruit profiles should be discussed in the context of the Proposed Rule. The status of these search activities should be recognized as a recruiting activity and not a selection decision. Here again, alignment with the language proposed within the Additional Questions and Answers, where electronic search results do not constitute an applicant pool, would aid interpretation and purposeful compliance.

4) Remove the term "advertised" from the description of basic qualifications. This qualifier adds complexity to the criterion and may not fit the manner by which many employers recruit prospective employees. For example, an employer may formally advertise only a subset of basic qualifications common to a certain job family or range of positions (e.g., a college degree in one or more related fields, a

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willingness to relocate or travel, and a willingness to work in a particular location). Once a specific position opening occurs, additional criteria may be applied (e.g., experience with a certain technology) and the database may be searched to identify individuals who possess these criteria. These criteria likely will not be "advertised" beyond communication of the position description to individuals identified in the database to inform them of the position opening and to determine if they are interested in further consideration. We recommend removing the term "advertised" and replacing it with "established" or "stated" basic qualifications to eliminate this potential source of confusion.

(5) A broader set of examples of what constitutes a basic qualification should be provided. Currently the document provides examples of basic qualifications that focus on educational and experience requirements. While these commonly deployed requirements provide a good basis for demonstrating non-comparative and objective standards, they do not provide adequate guidance regarding the range of requirements that may be used as basic qualifications.

Employers use many types of requirements in recruitment screening. Qualification requirements often include certain conditions of employment that an individual must meet to be considered for a position. Examples include a willingness to work in a specific geographic location, a willingness to travel a certain percentage of time, and a willingness to work certain days or shifts. Internet-based profiling tools allow for the collection of a broad range of job-relevant qualifications that may be objectively scored and used in a non-comparative decision rule, and it is assumed that a broad range of qualifications requirements are acceptable under the proposed rule. A broader range of examples will provide employers with needed guidance on the range of acceptable basic qualifications.

(6) Criterion four should be worded affirmatively and combined with the first criterion. The current wording of criterion four ("the job seeker does not indicate that he or she is no longer interested in the position") is problematic for two reasons. First, because it is not directly parallel to the applicant definition provided by the Additional Questions and Answers, it creates confusion regarding how to classify recruits under the two sets of guidance. Second, as stated the criterion may be interpreted to mean that when recruits have not indicated an interest or a lack of interest in a specific position, they are presumed to have interest in the position—even if no such statement of interest was solicited or offered. To address these two concerns we recommend adopting the language applied within the Additional Questions and Answers ("the individual has indicated an interest in a specific position") as the first criterion.

7) Eliminate the distinction between traditional and Internet applicants. Most organizations use both Internet and traditional (paper-based) processes in their recruiting activities. Maintaining a distinction between applicants based on their choice of a communication and submission vehicle adds tremendous complexity to the employer's recordkeeping burden. Furthermore, the distinction is already antiquated in the context of modern job search and recruiting. How is an employer to consider a recruit that views an on-line job announcement, sends an e-mail to a recruiter to request more information, sends a paper cover letter and resume through the mail, and sends follow-up communication through e-mail? If the same candidate

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also then completes an on-line profile, should they be considered as both a traditional and as an Internet applicant? Making multiple submissions of interest through alternative channels is a common practice among job seekers. We strongly recommend that a revised Rule provide only one definition of an applicant that applies regardless of how they submit their statement of interest to the organization.

8) The recordkeeping requirements are underestimated. The Proposed Rule suggests or implies that contractors are obligated to: (a) track applicants according to criteria that differ from those proposed by UGSEP agencies within the Additional Questions and Answers, (b) track traditional applicants according to different criteria than Internet applicants, and (c) retain records of all submissions of interest received through the Internet (noting the definitional problems discussed under Comment 2, above). Each of these is a new area of obligation for contractors and will require the devotion of organizational resources to comply. Failure to recognize these factors in the estimation of the recordkeeping burden will lead to grossly inaccurate conclusions and may lead employers to believe this important issue was examined in a superficial manner. We recommend that the revised Rule eliminate the differences associated with obligations "a" (see Comment 1) and "b" (see Comment 7), and the oversight of the additional burden associated with issue "c" should be reconciled in the estimation of the recordkeeping cost.

9) Provide additional procedural guidance. Several sections of the document suggest that employers should take action or perform analysis as a regular aspect of their recruiting and selection operations. Employer understanding and compliance would be greatly enhanced if each of the areas listed below were elaborated with examples of acceptable practice.

How should contractors establish the job-relatedness of basic qualifications? Techniques ranging from large-scale job analysis to straightforward rational explanations have been used to tie basic qualifications to business goals. Examples of acceptable approaches would help contractors understand how this important step should be conducted.

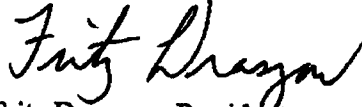
How and when should contractors collect race and gender data from applicants? It is clear that contractors have an obligation to collect race and gender data from individuals defined as Internet applicants; however, the document provides no guidance on when these data are to be collected. Nor is any guidance provided on the methods for their collection. It is our recommendation that race and gender data be collected only during the selection steps that follow the classification of a recruit as an applicant (i.e., after all four of the criteria have been met) through the administration of a voluntary questionnaire or a similar measure.

What "other relevant data" may be used when conducting availability analyses? The document suggests that the 2000 U.S. Census is "among the most current and discrete data available." However, for many positions and in many labor markets these data are too general to provide a match to specific jobs, especially when those jobs are highly skilled or unique. Examples of other appropriate data (e.g., local labor research, association membership) would help contractors understand the range of information they may include in these analyses.

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Once again, thank you for the opportunity to comment on this important document. With further refinement and integration with the Additional Questions and Answers, the Proposed Rule will be an important component of our nation's equal employment opportunity framework.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Fritz Drasgow". The signature is fluid and cursive, with the first name "Fritz" and last name "Drasgow" clearly distinguishable.

Fritz Drasgow, President
Society for Industrial and Organizational Psychology